

Executive Summary
CON & Futures
March, 2006

Futures Plan and Context

Vermonters hold a broad common vision regarding mental health care: we expect services to be of high quality and to be provided in a holistic, comprehensive continuum of care, where consumers are treated at all times with dignity and respect, where individual rights are protected, where public resources are allocated efficiently and produce the best positive outcomes, and where direct services overseen and provided by the Agency of Human Services and its community partners are person- and family-centered and driven, are accessible, and are culturally competent. We also share the understanding that all interventions must reflect the most integrated and least restrictive alternatives necessary.

Vermont's mental health system has many strengths of which we can be proud. The system also has significant challenges. From these challenges arises a unique opportunity for major system reform.

The Futures plan, fully implemented, would transform in-patient and rehabilitation services for the most severely ill. It would improve coordination of services and increase capacity for all adults with mental health problems. The result would be a continuum of care in which all of the elements are coordinated; prevention, early intervention and alternatives to hospitalization are pursued aggressively; peer supports are expanded and fully respected as essential to recovery; the individual is actively engaged in the development of his or her treatment plan; and outcomes are measured and continuous improvement is a key goal.

The core of the plan is the proposal for new investments in our essential community support systems, along with reconfiguration of the existing 54-bed inpatient capacity at VSH into a new array of inpatient, rehabilitation, and residential services for adults.

The existing facility for VSH is woefully inadequate. This creates challenging conditions for patients and staff every day.

Certificate of Need

Under current law the Division of Mental Health is required to seek a Certificate of Need (CON) from the Department of Banking, Insurances, Securities, and Health Care Administration (BISHCA) for the new inpatient programs set out in the Futures Plan. If the expected capital development costs for a new inpatient program exceed twenty million dollars, then a Conceptual Development Certificate of Need is also required.

The community programs in the Futures Plan (community residential recovery programs at the sub-acute and secure levels of care; crisis beds; transportation; housing; peer services) do not require a CON from BISHCA. Under 18 VSA § 9435 programs

developed by community mental health centers require approval from the Health Commissioner and this approval is filed with BISHCA.

The work to determine probable costs for the initial “program of space needs” and site feasibility for the primary inpatient service and the two smaller capacities is in progress, however it may reach the twenty million dollar threshold.

Therefore, the Division of Mental Health expects, under current law that it will be necessary to seek both a Conceptual CON and a full CON.

Issues: Futures and the CON Process

The BISHCA statutory framework for CON does not envision the State applying for the replacement of the state hospital. Therefore, simultaneous application of the CON and Futures legislative processes have overlapping procedures and potentially conflicting results. The primary areas of concern are duplicative and possibly contradictory planning processes and decision-making authority. In addition, the CON process elongates the timeframe to develop the new inpatient services and adds cost to the Futures Project.

Therefore, the Agency of Human Services and the Department of Buildings and General Services needs either an exemption from CON **or** legislative support for

- longer development timeframes,
- cost of the CON process (planning resources, professional services, and filing fees); and
- Legislative deference to BISHCA determinations relating to program characteristics, location, and costs.

A summary of the areas of conflict and impact follow.

Demonstration of Need

The core functions of the CON process are to demonstrate need for the health care service and to contain health care costs.

The need to replace Vermont State Hospital (VSH) has been clearly demonstrated. The legislature, the Futures Advisory Committee, the Centers for Medicare and Medicaid Services, the US Department of Justice, and the Vermont State Employees Association have all stated this. In addition, the existing network of psychiatric inpatient programs in Vermont relies on the tertiary level of care provided uniquely at VSH. Creating a new inpatient service and implementing the Futures Plan is among the highest priorities set by Governor Douglas.

Dual Planning Processes

The enabling legislation for the Futures Plan (Act No. 122, 2003-2004 § 141a.) overlaps with the CON criteria in every significant respect. Under this law, the Secretary of Human Services, in consultation with the Futures Advisory Group, is to consider a range

of criteria relevant to cost, need, quality, and options relative to developing alternative services to VSH. BISHCA's Health Resource Allocation Plan (H-RAP) mirrors these criteria, requiring the BISHCA commissioner to consider them and giving the public, through the Public Oversight Commission, the ability to comment on them. Through the Futures Advisory group, the Joint Legislative Mental Health Oversight Committee and the Joint Fiscal Committee there is extensive public review and comment of the Futures plan and implementation process. The appropriations process adds another layer of redundancy to the BISHCA review of cost. With regard to public input in the process, and the criteria relating to cost, need and quality the Futures Planning process and the CON process are duplicative.

Decision-Making Authority

The legislature has consistently wanted to be in the primary position regarding the review and decision making of the Futures plan. This includes the relevant policy committees, the institutions committees, the Joint Mental Health Oversight Committee, the Joint Fiscal Committee and the appropriations committees. The CON process does not envision an applicant that requires policy and appropriations approval from the legislature. Instead, under the CON process the Public Oversight Commission and the BISHCA Commissioner have the authority to determine scope, characteristics and cost of the proposed health care facility. There is a real possibility that the CON process could result in a different outcome than that which the Legislature has determined and set.

Timeline

In essence, the Conceptual CON requires that planning be demonstrated and approved prior to the expenditure of funds that could impact on the cost of health care to Vermonters. At the conclusion of the first phase of architectural design work (June 2006), the Department of Health would be able to apply for the Conceptual CON. Until the Conceptual CON is granted, no additional work could be undertaken on the second phase of building development as proposed by the Department of Buildings and General Services (BGS).

The Conceptual CON has never been done before so it is difficult to estimate the time required to complete the process; BISHCA staff estimate seven months.

Once a Conceptual CON is granted, the Futures project could begin work on parts of the second phase of facilities design work (we could not pursue permitting until a full CON is granted) and other aspects of program development. Once these are completed sufficiently the project would apply for a full CON. The timeframe for a CON to be granted is variable but ranges from eight to eighteen months. During this period, no further work on the new facility can be undertaken.

In summary, the CON process (both Conceptual and Full CON) can be reasonably estimated to take between 18 months and two years to complete. During this period, no work can be done on permitting or construction.

Finally, the possibility exists that an Interested Party will seek to litigate the BISHCA decision to grant a CON. Such an appeal could result in an additional delay of one to three years while the appeal is being resolved by the courts.

Cost

There is significant staff costs associated with completing CON applications. Hospitals usually devote teams of core writing staff in addition to attorneys, architects and accountants over extended timeframes to these applications. The current Futures staffing resources would need to be augmented to complete these tasks.

BISHCA requires filing fees based on the estimated cost of the project for both phases of CON. These are estimated to be forty thousand dollars. BISHCA also requires that the applicants pay the cost for their consulting architects and accountants to review the application. This is estimated at twenty thousand dollars.

The application process usually results in modifications to the initial plan. These modifications may impact on the project costs. Finally, the Commissioner of BISHCA, when granting a Certificate of Need, may attach conditions that impact the cost of the project.

Summary

The requirements of the CON process present significant challenges to the Futures Project in terms of dual planning processes, decision-making authority, timeline and cost.

The Agency of Human Services and Buildings and General Services need legislative assistance to resolve these issues. Two different approaches are possible.

The legislature could exempt the Futures Project from the CON process.

The legislature could support the Futures Project to meet the requirements of the CON process.